



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 174859

PRELIMINARY RECITALS

Pursuant to a petition filed on June 9, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on September 15, 2016, by telephone.

The issue for determination is whether the Winnebago County Department of Human Services (the agency) correctly seeks to recover an overpayment of FoodShare benefits from the Petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Problem Resolution Specialist
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. On May 16, 2014, the Respondent completed an application for BadgerCare and FoodShare benefits for herself and her two children. (Exhibit 7)

3. In the May 2014 application, the Respondent reported working at a painting firm, 40 hours per week at \$15.50 per hour. This works out to be:

40 hours x \$15.50 per hour x 4.3 average weeks per month¹ = \$2,666 gross monthly income.

(Exhibit 7)

4. On May 22, 2014, the Petitioner contacted the agency to report that she had been laid off and that she would receive unemployment benefits in the amount of \$302.00. (Exhibit 4)

5. The Petitioner stopped receiving unemployment benefits on May 27, 2014. (Exhibit 4)

6. Petitioner obtained new employment on the last day of May 2014. It appears she received her first paycheck in July 2014. (Testimony of Petitioner; Exhibit 14)

7. On June 11, 2014, the agency sent the Petitioner a notice indicating that her application for FoodShare benefits was approved and that for June 2014 it was not counting any earned income. (Exhibit 3)

8. On June 16, 2014, the Petitioner contacted the agency to inquire about her BadgerCare+ benefits. The Petitioner told the agency that her children did not need the benefits, because they had health insurance through their father. (Exhibit 4)

9. On June 17, 2014, the agency sent the Petitioner a notice, indicating that her May application was approved and that she was enrolled in BadgerCare+. The children were not enrolled, because the Petitioner indicated that they had insurance coverage through their father. (Exhibit 12)

10. From her new job, Petitioner earned \$2,353.75 in July 2014, \$2,581.25 in August 2014, \$2,555.00 in September 2014, \$3,533.25 in October 2014, and \$2,464.00 in November 2014. (Exhibit 14)

11. On May 18, 2016, the agency sent the Petitioner a FoodShare Overpayment Notice, claim number [REDACTED], indicating the Petitioner was overpaid \$1,519.00 in benefits for the period of September 1, 2014 through November 30, 2014. (Exhibit 8)

12. On June 2, 2015, the agency sent the Petitioner a repayment agreement. (Exhibit 2)

13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 9, 2016. (Exhibit 1)

¹ 7 C.F.R. 273.10(c)(2) requires future income to be estimated using a 4.3 weeks per month, or 2.15 bi-weekly pay periods per month.

DISCUSSION

Federal law generally requires that all FS overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .
7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH) § 7.3.1.1.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

As there is no evidence to indicate that Petitioner's household included an elderly, blind or disabled (EBD) member, the Petitioner needed to report any changes in income that put her household over the 130% of the FPL reporting threshold:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Between October 1, 2013 and September 30, 2014, 130% of FPL for a household 3 was \$2,116 per month. *FSH, §8.1.1 – Release 13-02* The Petitioner's earned income of \$2,353.75 in July 2014 exceeded the 130% reporting threshold. As such, she needed to report that change in income by August 10, 2014.

The Petitioner asserts that she did, in fact, report her new job and her new income when she called the agency on June 16, 2016. The Petitioner testified that she remembers this clearly, because she had gone to the doctor and found out that she needed her old Forward Health Card, which she had

previously discarded. The Petitioner testified that she needed to contact the agency to request a new Forward Health Card. However, the Case Comments in Exhibit 4 do not document this conversation. [REDACTED], an Economic Support Worker, testified that she spoke to the Petitioner on the date in question, and although she has no specific recollection of their conversation, she would have noted any reported change in income or employment in the Case Comments.

Petitioner's claim is a little bit strange, given that the agency did not notify her of her eligibility until July 17, 2014. In the absence of documentary evidence showing that the Petitioner reported her new employment by August 10, 2014, it is found that the overpayment was caused by client error.

Had Petitioner timely reported that change in income, her benefits would have been affected in September 2014. As such, the overpayment period begins in September 2014. *See FSH, §7.3.2.1*

Looking at the income calculations in the overpayment worksheets (Exhibit 8) and applying the allotment chart in *FSH, §8.1.2*, the Petitioner's correct allotment for September 2014 (net income of \$1,628) should have been \$8.00 and her correct allotment in October and November 2014 (net income of \$1,650) should have been \$16.00. As such, the total overpayment will have to be reduced by \$40.00, since the agency took a full overpayment for each of those months.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid FoodShare benefits for the period of September 1, 2014 through November 30, 2014. However, it did not correctly calculate the Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That the agency amend claim number [REDACTED], to reflect an overpayment of \$1,479.00 for the period of September 1, 2014 through November 30, 2014. The agency shall take all administrative steps to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

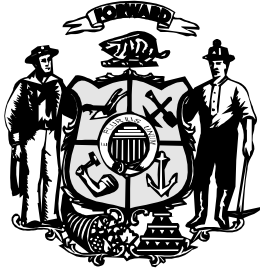
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Milwaukee, Wisconsin, this 22nd day of
September, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 22, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability